

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-007912-002 DT

03/24/2011

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
H. O'Shaughnessy
Deputy

STATE OF ARIZONA

KIRSTEN VALENZUELA

v.

ELDRIDGE AUZZELE GITTENS (002)

SUSAN L COREY
PETER JONES

CAPITAL CASE MANAGER
COURT ADMIN-CRIMINAL-CCC
PRETRIAL SERVICES AGENCY-CCC
VICTIM SERVICES DIV-CA-CCC
VICTIM WITNESS DIV-AG-CCC

CAPITAL CASE ASSIGNMENT AND SCHEDULING ORDER

The State has filed a notice seeking the death penalty. Rule 8.2(a)(4), Arizona Rules of Criminal Procedure, requires capital cases to be resolved within twenty-four (24) months from the date the State files a notice of intent to seek the death penalty pursuant to Rule 15.1(i). Article II, § 2.1 (10), Constitution of the State of Arizona, guarantees each victim the right to a speedy trial. The Notice of Intent to Seek the Death Penalty was filed on January 12, 2011.

Rule 1.2, Arizona Rules of Criminal Procedure, provides:

These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

The Arizona Rules of Criminal Procedure will be enforced to achieve those goals. Material facts and exhibits not disclosed may be precluded. Failure to timely disclose information required to be disclosed pursuant to Rules 15.1 and 15.2, Arizona Rules of Criminal

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Procedure, may result in sanctions being imposed. Counsel should assure that their respective disclosure statements and supplements are complete and comprehensive.

Accordingly,

IT IS HEREBY ORDERED setting the LAST DAY as January 12, 2013.

IT IS FURTHER ORDERED pursuant to A.R.S. §§ 13-753 and 13-754, that Defendant undergo IQ, competency and sanity prescreening evaluations. In the event an objection to the testing is not filed by Defendant within ten business days of the date of this minute entry, the Court will appoint one or more experts to conduct the prescreening evaluations regarding Defendant's intelligence quotient, competency to stand trial and whether Defendant was sane at the time Defendant allegedly committed the charged crime(s).

IT IS FURTHER ORDERED setting trial on December 10, 2012 at 10:30 a.m. before the Honorable Paul McMurdie. This is a firm trial date and will not be continued absent a "showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice." See Rules 8.2(d) and 8.5(b), Arizona Rules of Criminal Procedure. The trial date is being set early in the case to assist assigned counsel in resolving any scheduling conflicts.

Each retained expert should be informed of the trial date to confirm their availability in the event that the expert becomes a testifying witness. If an expert witness is not available at the time of trial, counsel should arrange to take a videotape deposition for presentation of that expert witness' testimony to the jury.

IT IS FURTHER ORDERED that the assigned judge shall not grant a continuance to the trial date beyond the current last day. Any motion to continue the trial date beyond the current last day must be submitted to the Presiding Criminal Judge or his/her designee.

IT IS FURTHER ORDERED assigning this case to Paul McMurdie. The assigned judge will handle all pretrial matters. In the event the assigned judge is in trial or otherwise unavailable on the trial date, another judge will try the case.

This Court has an obligation to facilitate that capital cases are tried in a timely manner by prepared counsel meeting qualifications set by the Supreme Court,

A Rule 6.2 hearing has been held before the Criminal Presiding Judge, Judge Douglas Rayes, to determine defense counsel. At the hearing, proposed counsel provided the Court with verification of counsel's certification to defend a capital case and discussed the number of cases, capital and non-capital, in which they are currently counsel of record.

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IT IS FURTHER ORDERED that the following disclosure schedule shall apply:

1. The State shall abide by the time limits set forth in Rule 15.1, and in particular, Rule 15.1(i), Arizona Rules of Criminal Procedure.
2. The Defendant shall abide by the time limits set forth in Rule 15.2, and in particular, Rule 15.2(h), Arizona Rules of Criminal Procedure. All mitigation evidence shall be disclosed in accordance with the requirements of Rule 15.2(h).
3. Alternatively, counsel may personally confer and present to the court at the first case management conference a case management plan including a discovery and disclosure schedule which, if adopted by the court, will be the controlling schedule for the case. The case management plan proposed by counsel must accommodate the above trial date and last day.
4. The disclosure of each expert witness shall be accompanied by at least three dates on which the expert and the disclosing party's counsel are available for opposing counsel to conduct an interview of the expert witness.

The schedule established by the Arizona Rules of Criminal Procedure or adopted by the court may be deviated from by written agreement between counsel and approval of the assigned judge, but any deviation from the time limits prescribed by the Arizona Rules of Criminal Procedure or the adopted case management plan shall not affect the last day or trial date.

Evidence, material facts or exhibits not fairly disclosed will not be used during any phase of the trial.

IT IS FURTHER ORDERED that prior to the next scheduled status conference before the assigned judge, counsel who will try the case shall personally meet and decide on a date by which all witness interviews shall be completed. The judge shall include that date in the status conference minute entry. Information obtained during interviews occurring after that date will not be grounds for a continuance of the trial date.

IT IS FURTHER ORDERED that counsel have set and participate in a resolution management conference at least 60 days prior to the final trial management conference. All counsel shall attend the resolution management conference including those who have the authority to settle the case. If the trial attorney must consult with someone in order to obtain authority to settle the case, the person with whom consultation is required shall personally attend the resolution management conference.

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IT IS FURTHER ORDERED setting a case management conference before the assigned judge on April 12, 2011 at 8:30 a.m. The assigned judge shall set subsequent case management conferences not more than every 60 days.

IT IS FURTHER ORDERED that at each case management conference, counsel shall submit a jointly agreed upon written case status report showing the progress made on the case. At a minimum, the report shall set forth the status of all forensic testing and the number of interviews completed. Failure to submit a written report may result in the imposition of sanctions.

At Defendant's counsel's request, an Order for Production of Mitigation Documents pertaining to acquisition of Defendant's records will be signed by the Presiding Criminal Judge and will be available for pickup in ECB 411 by Defendant's counsel, Defendant's mitigation specialist or an authorized representative of Defendant.

IT IS FURTHER ORDERED that all ex parte motions requesting additional orders for acquisition of mitigation evidence shall be submitted to the assigned judge. Should an ex parte meeting with the assigned judge to discuss the details of the mitigation work be deemed necessary, defense counsel may make that request pursuant to Rule 15.9(b), Arizona Rules of Criminal Procedure.

IT IS FURTHER ORDERED setting a final trial management conference on December 3, 2012 at 8:30 a.m.

IT IS FURTHER ORDERED that all materials needing language translation must to submitted to CITS no later than 120 days prior to the final trial management conference. Counsel shall advise CITS of any interpreter needs at trial no later than 60 days before trial. A request for translation services made less than 120 days prior to the final trial management conference will not be considered as a ground for a trial continuance.

IT IS FURTHER ORDERED:

1. No less than five (5) judicial days prior to the final trial management conference, counsel shall file:

A. Any trial memoranda (optional), which will be in lieu of post-trial briefs unless otherwise requested by the Court at the conclusion of the trial.

B. Motions in limine, which must meet the test of State v. Superior Court, 108 Ariz. 396, 499 P.2d 152 (1972): "The primary purpose of a motion in limine is to avoid

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disclosing to the jury prejudicial matters which may compel a mistrial." Each motion shall be limited to one issue and no more than five (5) such motions per side will be considered by the court.

C. A Joint Pretrial Statement (not optional). Objections to exhibits and deposition testimony are deemed waived unless set forth in the Joint Pretrial Statement.

D. An agreed upon jury questionnaire.

E. Proposed jury instructions. Prior to the due date for the proposed jury instructions, counsel shall personally consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary and final jury instructions and clean copies thereof. If counsel request any non-uniform jury instruction, the Court requests that counsel provide a disk containing all non-uniform jury instructions in Word format.

Non-RAJI (Revised Arizona Jury Instructions - Criminal, 3rd Ed.) instructions should be typed, each on a separate page with a heading (i.e.: Defendant's Instruction No. 2 etc.), and provide authority for the instruction. Please number each instruction consecutively, rather than leaving a blank space for someone else (such as the court) to number. Counsel should also submit a clean copy of each non-RAJI instruction.

2. Written response to a motion in limine may be filed no later than noon of the day before the final pretrial conference.

3. At least three days before the trial date, the trial lawyers or their knowledgeable assistants shall appear in the trial division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS which will be prepared by counsel and downloaded (saved) onto a CD in Microsoft Word and given to the clerk with the exhibits. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked to correspond with the list provided. Counsel are directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that includes duplicate exhibits. Counsel should not reserve exhibit numbers for additional exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged. If an objection to an exhibit is not stated in the pretrial statement, all objections are deemed waived and the trial judge will assume the exhibit may be marked directly in evidence.

4. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

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5. All motions other than motions in limine shall be filed at least 60 days before the final pretrial management conference to allow sufficient time for briefing and oral argument. The trial will not be continued because a motion is pending.

6. Expert witnesses should be scheduled to allow sufficient time to complete direct, cross and redirect examinations by 4:30 p.m. If a doctor or other expert witness is scheduled to appear in the afternoon on any trial day, the party calling the witness should consider having the witness plan on returning to court the morning of the next trial day unless all counsel have agreed to a time allocation for completing their questioning by 4:30 p.m. The trial judge will likely not keep the jury later than 4:30 p.m.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.